

REMARKS

1. The Office Action has rejected Claims 1 – 46 under 35 U.S.C. §251 because of problems identified in the Office Action with the reissue oath. In response thereto, Applicant is submitting herewith a Supplemental Declaration for Reissue Patent Application.

In view of the Supplemental Declaration, Applicant respectfully requests that this rejection be reconsidered and withdrawn.

2. The Office Action has rejected Claims 43 – 46 because of the “Recapture Rule”. The Office Action indicates that Claim 1 was amended in the original patent and argued to be patentable because the invention included “an articulated frame...and draft tongue pivotally connected...about an articulation axis located forwardly of said tilt pivot axis”. The rejection is respectfully traversed.

Applicant respectfully submits that the Recapture Rule is not applicable to newly presented Claims 43 – 46 by reason that independent Claim 43 is materially narrowed in other respects compared to the above-identified limitations removed from Claim 1 in the creation of Claim 43. More particularly, Claim 43 contains limitations that define the locking mechanism as selectively permitting the bed frame to pivot respectively relative to the dump pivot axis and relative to the tilt pivot axis. In other words, the locking mechanism is selectively operable to make the bed frame pivot about one of two different axes.

Accordingly, the recapture rule is avoided as this limitation of a locking device that is operable to control which pivot axis the load bed will pivot about was (1) not previously in independent Claim 1, nor in any other original patent claim, and thus was overlooked during prosecution of the original patent application; and (2) a limitation that patentably distinguishes Claim 43 over the cited prior art. Since Claim 43 has been materially narrowed with respect to the originally patented Claim 1 other than the limitations that had been surrendered in the prosecution of Claim 1, the recapture rule does not apply and the broadening aspects of Claim 43 are permissible. Thus, Applicant is not simply recapturing surrendered subject matter.

Furthermore, the previous Office Actions in this reissue application have maintained that the invention as defined by originally patented Claim 1 was not allowable because of a previously uncited prior art reference (U. S. Patent No. 3,235,284 – Yant), requiring

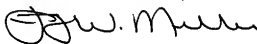
both Claims 1 and 43 to rely on the limitation of the locking device being selectively operable to pivot the load frame about one of two different pivot axes to patentably distinguish the claims. Accordingly, the “surrendered subject matter” does not provide a basis on which Claim 1 is allowable over the prior art, even though argued as such in the original patent application.

For the reasons given above, Applicant respectfully requests that this rejection be reconsidered and withdrawn.

3. In summary, no claims have been amended or canceled and Claims 1 and 3 – 46 remain in the application. Applicant believes that the claims are allowable based on the foregoing amendments. Applicant respectfully requests that all rejections be reconsidered and withdrawn and that all claims remaining in this case be allowed.

Pursuant to currently recommended Patent Office practice, the Examiner is expressly authorized to call the undersigned attorney if in his judgment disposition of this application could be expedited or if he considers the case ready for final disposition by other than allowance.

Respectfully submitted,



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